



County of Santa Cruz

COUNTY CLERK / ELECTIONS

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GAIL L. PELLERIN, COUNTY CLERK

April 8, 2009

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Dear Reference Attorney:

I am writing in regard to the Proposed Emergency Regulations submitted April 3, 2009, by the California Secretary of State regarding the Post Election Manual Tally (PEMT).

I am the elected County Clerk for the County of Santa Cruz, and as such, serve as the Registrar of Voters. I have administered elections in Santa Cruz County for nearly 16 years, and I am currently serving as a member of the Secretary of State's PEMT Working Group. I am commenting on my own behalf, and not for other members of the PEMT Working Group.

While I support efforts to regulate and expand post election audits, I question the objective of the PEMT and challenge the necessity to put these regulations forth as emergency regulations.

Currently, following each election, the machine tally of votes cast is verified by a manual tally of one percent of the precincts, both polling place votes and vote-by-mail votes, selected at random, plus one precinct for every contest not covered in the one percent (Elections Code Section 15360). This manual tally is conducted based on election night results and differs from a recount, in that the votes are interpreted as the counting equipment is designed to "read" them, with no consideration given to voter intent. The sole purpose of this tally is to verify that the equipment is counting the votes as it is designed to do. Any error in, or manipulation of, the ballot counting program, would become obvious during the testing or verification process.

Counties using Direct Recording Electronic Devices (DRE's) also recount the voter-verified paper record of 100 percent of the votes cast on those units. In addition, in the past results have been verified by Parallel Monitoring, conducted by the Secretary of State. Parallel Monitoring is the testing of a randomly selected sample of voting equipment, designed to simulate actual election conditions to confirm that the system is registering votes accurately. Ballot counting equipment in California cannot be connected to the internet, nor is the equipment networked from county to county.

In addition, in the course of conducting the canvass, elections officials are required to do a complete audit of the polls, reconciling the number of ballots issued to the number of ballots cast and unvoted, unused ballots. This audit is essential in order to identify any manipulation of paper ballots or any problems with the ballot counting system not counting all ballots cast.

With the current audits and controls that are in place, I do not see any evidence that these proposed Emergency Regulations are necessary to prompt emergency action to avoid serious harm to the public peace, health, safety or general welfare. In fact, I would argue that if implemented and triggered by a countywide or statewide contest, the proposed Emergency Regulations would cause harm to our economy and election processes.

The PEMT adds another layer of auditing that is based on election night results. However, the regulations require election officials to look for voter intent and to identify variances. In trying to implement the regulations, we found them complicated and unclear. The current and proposed Regulations allow the precinct(s) tallied under the one percent manual tally (E.C. 15360) to be counted as part of the 10% PEMT, however, voter intent is not considered in the one percent manual tally, and there was confusion as to whether voter intent was to be considered as a variance in the PEMT.

It also makes little sense to do the expanded audit on contests that are close election night when 20% or more of the ballots cast have yet to be counted because they are vote-by-mail ballots turned in during the final days before the election or provisional ballots.

If the goal is to determine if the contest was counted correctly and the winner is truly the winner in close contests where variances do occur, it makes sense to conduct the PEMT once the vote is certified. Certainly contests that are close election night may very well have large margins of victory by the time the vote is certified. And conversely, contests that have wider margins election night may end up extremely close at the time of certification.

In the end, I found the PEMT to cost precious time and money (more than \$5,000) and I did not see the benefit or purpose of such a task. We were lucky in November, as our close contests were relatively small jurisdictions. However, if we were to consider a worse case scenario of a close statewide contest election night, we would find counties unable to certify election results within 28 days, and spending upwards of \$10 million statewide to recount one statewide contest.

I was honored to be asked to serve as a member of the PEMT Working Group. My goal was to provide input to the Secretary and her staff that would result in successful, logical, practical and workable Regulations. In order to achieve this goal, I considered it imperative that we, the members of the working group, have a clear understanding of the objective of the PEMT. Other members of the Group agreed, and the question was posed to staff during the first conference call. We were advised that the question would be conveyed to the Secretary, but, in the meantime, we were to continue to work with staff to discuss issues and make clarifications, which we have done. However, without the clear objective of the PEMT, we were not able to suggest substantive changes.

On February 27, 2009, after having received no response to our initial question, and following three consecutive cancelled meetings of the PEMT, five members of the working group sent a letter to the Secretary setting forth our concerns and the need for the objective. We have yet to receive a reply.

I am also concerned about the "Economic Impact Statement" presented to your office by the Secretary of State. The November 2008 election only cost counties \$680,000. And, again, with the exception of Santa Barbara County, we were all fairly lucky in that the contests that fell under the PEMT were relatively small. However, if for example, in the May 2009 election, if one state proposition falls under PEMT, the potential cost is \$10 million. And, again, I have to ask, for what purpose?

It would be far more prudent to impose a state funded automatic recount of close contests upon certification of an election. At that point, winners and losers are clear and voter intent can be incorporated logically and fully in order to confirm that the correct person or position won.

I have every interest in continuing to work with the Secretary of State, and her staff, to devise Regulations to affect a successful, logical, practical and workable PEMT. However, I believe the Proposed Regulations are flawed in their design and sufficient funding has not been provided. I would respectfully request that the application for an extension of the Emergency Regulations regarding the Post Election Manual Tally not be approved.

Thank you for your consideration of my comments. Should you have any questions in this regard, please feel free to contact me at [REDACTED] or e-mail [REDACTED]

Sincerely,



Gail L. Pellerin
Santa Cruz County Clerk

Cc: Secretary of State